In the High Court of Punjab and Haryana, Chandigarh

I.T.R. No. 14 of 1995

Date of Decision: 9.5.2007

The Commissioner of Income Tax, Patiala

…Petitioner

Versus

M/s Gurdwara Karamsar, Rara Sahib Trust, Ludhiana

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. S.K. Garg Narwana, Advocate,
for the revenue.

JUDGMENT

M.M. KUMAR, J.

Following question of law, arising out of order dated 28.6.1993, passed by the Income Tax Appellate Tribunal, Chandigarh Bench, in I.T.A. No. 88/Chandi/1989, in respect of assessment year 1985-86, has been referred for opinion of this Court:-

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the funds of the trust have been applied for the purposes of the Trust?"

Facts in brief are that the assessee is a trust and during the assessment year 1985-86, it purchased one imported car for a sum of Rs. 5,90,000/-. The car could not be registered in the name of the trust as it was not allowed to be sold for five years. The Assessing Officer called upon the assessee to show cause why the amount spent on the purchase of car be not treated as funds, which have not been applied for the purposes for which the trust was established. The assessee submitted that the seller was neither a trustee nor a relation of any of the trustees. It was further pointed out that the car was actually purchased on 9.4.1984 and the possession was taken. However, the explanation was not acceptable to the Assessing Officer, who held that sum of Rs. 5,90,000/- was not applied for the purposes of the trust and accordingly he disallowed the expenditure on the car. The Commissioner of Income Tax (Appeals), recorded a finding on the basis of an affidavit filed by the assessee that the car was, in fact, in possession of the assessee trust. The CIT (A) further recorded the finding that the car had been purchased with the funds of the trust although the registration continued in the name of the seller on account of bar on its transfer for five years. It was, therefore, held that the expenditure on car was applied for the purposes of the trust and the additions made were deleted. The Tribunal upheld the view of the CIT (A) by observing as under:-

> "4. After hearing the learned representatives of the parties, we hold that the decision of the learned CIT(A) is correct. The Kerala High Court in CIT vs Nidish

> Transport Corporation (1990) 185 I.T.R. 669 has held that a motor vehicle is a movable property and the transfer of ownership of the vehicle is governed by the Sale of Goods Act, 1930 and not by the provisions of Motor Vehicles Act, 1939. The car has un-disputedly been purchased with the funds of the trust and the possession has also been taken over by the trust. In that view of the matter, the assessee trust be coming the owner of thus be it for purposes for depreciation or for application of funds. We, therefore, uphold the order of the learned CIT (A)."

On the perusal of the order passed by the CIT (A) and the Tribunal, we find that the question as to whether the expenditure on purchase of car by the assessee has been applied for advancing the object of the trust is a question of fact. The CIT (A) as well as the Tribunal on the basis of the un-controverted affidavit filed by the assessee has recorded a finding of fact that the possession of car was with the trust and that the car was purchased with the funds belonging to the assessee trust. Merely because the car was not transferable for five years, would not constitute a valid basis to record a finding that the funds spent by the assessee-trust on the purchase of car were not in furtherance to advancing the object of the trust. Therefore, there is no merit in the contention raised by the revenue. Learned counsel for the revenue has not been able to refer any material on record, which has not been considered by the Tribunal. The view expressed by the

Tribunal has not been shown to be perverse. Accordingly, while endorsing the view expressed by the Tribunal we answer the question against the revenue and in favour of the assessee. The reference is disposed of accordingly.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

May 9, 2007
Pkapoor